

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

JOSEPH H. LAVIGNE, JR.

Petitioner,

CIVIL ACTION NO. 3:13-cv-29691

v.

MARVIN PLUMLEY, Warden,
Huttonsville Correctional Center,

Respondent.

STATUS REPORT

Pursuant to the Court's Order dated April 20, 2015, ECF No. 25, Petitioner Joseph H. Lavigne, Jr., by counsel, offers the following report as to the status of DNA testing ordered by the Circuit County of Putnam County, West Virginia.

Both parties obtained an agreed joint order from Putnam County Circuit Judge Joseph Reeder allowing Petitioner to consume and combine the hair evidence that was collected in connection with the underlying criminal case. This order was entered on September 6, 2017. Comparison samples from Mr. Lavigne and the victim KH were sent to forensic serologist Phillip Hopper on November 17, 2017. The hairs were examined and consumed in testing by serologist Hopper for additional results. A written report recording the outcomes and results of the mitochondrial DNA testing of the hairs was received on December 18, 2017, and was shared with Putnam County Prosecutor, Mark Sorsaia.

DNA testing of the vaginal swabs from the sexual assault kit was complete as of February 20, 2018. Additional DNA evidence was sent to forensic DNA analyst Mr. David

Hansen for evaluation on March 12, 2018. A fifty-seven page written report recording the outcomes and results of the DNA testing of the vaginal swabs and the additional DNA evidence was received on April 13, 2018, and was shared with Putnam County Prosecutor, Mark Sorsaia.

The West Virginia Innocence Project (“WVIP”) is a law clinic at the West Virginia University College of Law staffed by law students and law school faculty during the fall and spring semesters. With the completed DNA testing, WVIP intends to file a *coram nobis* petition on behalf of Mr. Lavigne in the Putnam County Circuit Court. Given the constraints of the school year calendar, WVIP anticipates filing the *coram nobis* petition in the fall semester of 2018. Petitioner can also at that time file a supplemental memo to this Court on the impact of the DNA results on Petitioner’s *Schlup/McQuiggin* claim, should it be helpful to the Court. See Petitioner’s Motion to Stay Consideration of Petition For Writ of Habeas Corpus Pending Results of DNA Testing, ECF No. 14, p.2.

Petitioner therefore submits that the stay should remain in effect pending the anticipated events described above.

Respectfully submitted May 4, 2018.

JOSEPH H. LAVIGNE, JR.,
Petitioner.

By counsel,

/s/ Valena Elizabeth Beety
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CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2018, I electronically filed the foregoing *Status Report* with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to:

Shannon F. Kiser, Esq.
Assistant Attorney General
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OF WEST VIRGINIA
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/s/ Valena Elizabeth Beety
VALENA ELIZABETH BEETY (WVSB 11907)